

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY McDANIEL,

Petitioner,

Criminal Case No. 01-80705

Civil Case No. 05-71210

v.

Honorable John Corbett O'Meara

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER
DENYING PETITIONER'S MARCH 29, 2005 MOTION TO VACATE SENTENCE

This matter came before the court on petitioner Jeffrey McDaniel's March 29, 2005 motion to vacate sentence pursuant to 28 U.S.C. § 2255. The government filed a response July 11, 2005; and Petitioner filed a motion for default/summary judgment July 19, 2005.

The court entered a judgment and commitment order in the case of petitioner Jeffrey McDaniel on February 3, 2003. Title 28 U.S.C. § 2255 provides for a one-year time limit for filing petitions. Therefore, his petition is untimely.

Petitioner filed his motion to vacate his sentence based on the holding in the United States Supreme Court case filed earlier this year, Booker v. Washington, 543 U.S. 220 (2005). However, the Court's holding in Booker, which requires a jury finding or an admission during a guilty plea of facts used to reach a sentence, is not retroactive to Petitioner's case, as Booker applies only to cases on direct review. The Court of Appeals for the Sixth Circuit has held that Booker is not retroactive to cases on post-conviction review. Humphress v. United States, 398 F.3d 855, 860-63 (6th Cir. 2005).

Therefore, it is hereby **ORDERED** that petitioner McDaniel's March 29, 2005 motion to vacate sentence is **DENIED**.

It is further **ORDERED** that Petitioner's July 19, 2005 motion for default/summary judgment is **DENIED AS MOOT**.

s/John Corbett O'Meara
John Corbett O'Meara
United States District Judge

Dated: December 22, 2005